



Is the Canadian Indian Act

"Legislated Discrimination"?

by

Walter Currie

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a balanced procedure is achieved. Every effort is made to conciliate the complaint and to obtain a settlement. The Commission's policy in this area is to keep formal correspondence to a minimum and to place strong reliance upon personal contact and discussion. The conciliation process is highly flexible and, as a policy, the investigator concentrates rather less on the issue of legal guilt than on the issue of effectuating a satisfactory settlement. This procedure is predicated on the thesis that confrontation and accusation tend to reinforce the discriminatory attitude. For example, if the accused is asked whether he has committed a discriminatory act, almost invariably, he will deny it. Once having denied it, his assumption of this pose of self-respect will compel him to resist conciliation overtures. A settlement then would be perceived as an admission of guilt.

If conciliation fails, the Commission may recommend that a person outside of government be appointed to act as a Board of Inquiry to investigate and report on the complaint. This step is a significant departure from the practice of the majority of Human Rights Commissions in the United States where the investigative and adjudicative functions are frequently combined within the one agency, with an internal separation of responsibility. In my view, separation of function on this basis sacrifices considerable fluidity of action necessary for effectual compromise and settlement. The staff person investigating the case is, in effect, relegated to the function of gathering evidence and, not unnaturally, encounters considerable opposition and hostility. Our staff are empowered to obtain an "on-the-spot" settlement if possible, which is especially useful if, during the process of investigation, both parties seem co-operative and desirous of an agreement. Essentially, the whole matter of conciliating human rights complaints requires a judicious blending of the "velvet glove" and "iron hand." When I say that we have a settlement-oriented approach, let me be very specific in terms of what the practical elements of a settlement entail.

If the complaint involves a housing situation, the accused will be urged to act in good faith and offer the complainant an apartment or house or room or whatever; if it is a job, he might offer the individual immediate employment or assure him that within a given period of time, employment will be forthcoming; if he has denied an individual a haircut, he is asked to cut the person's hair immediately; If he has denied resort accommodation, he will be required to offer it during the current or subsequent season.

Returning, briefly, to the Board of Inquiry let me explain how the civil liberties of the accused are protected at this level. Board chairmen are usually drawn from the ranks of county court judges or deans of law schools. These Boards are empowered to summon witnesses, order production of documents and take evidence on oath in a manner that best suits the nature of the inquiry. The hearing is generally conducted in a local court house, where the Commission, through its counsel, adduces the relevant evidence and the respondent is afforded the opportunity of reply.

Procedure

The Board of Inquiry procedure provides for a fresh and untarnished appraisal of all matters pertinent to the issue. Although not articulated in the legislation, this philosophy probably stems from the principle that "no man shall be judge in his own cause." Without determining the merit of such an apprehension, it is feared that an individual who has buried himself in investigation and conciliation on one side of an issue may be disabled from bringing to a decision that dispassionate judgement which our tradition demands of officials who decide such questions. Even if this function is initially segregated by the adoption of a rigid division of internal powers, there may exist a very strong temptation on the part of a body like the Commission to decide that its officers have proved their case with the result that the individual, against whom the complaint is made, not unnaturally, resents having his rights settled by the same body that investigated the case. There is also the danger that the Commission, after repeated exposure to acts of discrimination, may develop certain measure of bureaucratic cynicism inimical to the fair administration of the legislation. Therefore, by means of the *external* separation of these functions between the Commission and its professional staff on one side and the Board of Inquiry on the other, the Ontario approach, offers an equitable system for early resolution of these matters in which justice not only is done, but appears to be done.

Frequently the Board acts as a super-conciliator. But, failing settlement, it can assume a more formal posture by advising the Commission that the case should be dismissed or, if convinced that discrimination did in fact take place, it may advise the Minister to issue an order requiring the respondent to cease the complained-of practice or face prosecution. The Board may alternately choose to by-pass the order and recommend direct prosecution to the Minister. If the

latter course is chosen, the whole matter is inquired into *de novo* by a magistrate applying the quasi-criminal standards of evidence and proof, thus affording to the accused the full protection of yet another branch of the law.

On conviction, the accused is liable, in the case of an individual, to a fine of not more than \$100 and, if a corporation or trade union, to a fine of not more than \$500. Because of the minimal nature of the fine levied, some individuals might, at first, choose court proceedings rather than relinquish their discriminatory policy and treat the fine as merely a "license to discriminate". In order to discourage this type of attitude, the Minister is empowered to seek an injunction against such continuing contravention. In effect, the Ontario system, while providing for a speedy and flexible method of resolution, doubly insulates the accused from any bureaucratic evil by giving him the opportunity of making his answer and defense to the allegations at two separate and distinct stages and before two separate and unrelated independent tribunals.

The Task Ahead

The Ontario Human Rights Code and the Age Discrimination Act represent an attempt by the legislators of this Province to protect its citizens and residents from discrimination in the areas of housing, employment and public accommodations. They are not perfect instruments designed to cover all violations of human rights but deal, instead, with the types of discrimination to which minority groups and older workers are particularly vulnerable. While the Commission is primarily responsible for enforcing the legislation and preventing discrimination, it is nevertheless strongly committed to creating a climate of understanding and respect among all races, creeds and national groups in this Province.

Human rights legislation is relatively new throughout North America, and this means that there will be serious questioning for a considerable period of time of the operational methods employed by bodies such as the Ontario Human Rights Commission. Where there are no teachers, one has to train oneself. This is very much the position of the Ontario Commission.

As we face International Year for Human Rights in 1968, commemorating the 20th anniversary of the signing of the Universal Declaration of Human Rights, let us remember the rich legacy that we have in this province in respect of social justice and make every effort to obliterate all pockets of discrimination and prejudice.

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Is the Canadian Indian Act "Legislated Discrimination"?

by WALTER CURRIE*

LAST YEAR, THIS LAND OF OURS CELEBRATED ITS 100th BIRTHDAY, ITS CENTENARY—parades were held, cakes were cut, fireworks were exploded, speeches were made—and across this land, we Canadians were proud and happy—proud of our past and happy for the future.



From one of those speeches telling of Canada's fortune and prosperity were these words: "But not all of its people are free from want or hardship. There are still wrongs to be righted and suffering to be relieved." These words were spoken in Ottawa by Queen Elizabeth II as she started us into our second century.

It is on this basis I wish to speak with you of a people who are not free from want, who are not free from hardship, who still suffer wrongs, and whose wrongs need to be righted. I wish to speak with you about my people, the Indian. And maybe, as one drum beating forth the truth for both the Indian and non-Indian, other and greater drums may add to the message so that all the people of Canada will hear, will learn, will understand, and will right those wrongs.

The Indian Today

70% of the Treaty or Registered Indians exist on some 2200 reservations which are scattered from coast to coast. Indians, but no reserves, are to be found also in the Yukon and the N. W. Territories.

Once the term, the Vanishing Redman, was applicable, but no longer. The Indian is the fastest growing ethnic group in Canada—a 55% increase from 1949 to 1964—and this growth despite an infant mortality rate which is now only 60 per thousand (10 yrs. ago it was 96 per thousand). The national rate has dropped from 32 to 24 in the same 10 years (according to the Globe and Mail of March 14, 1967). The Telegram later that month reported "30% of Canadian Indians are so underweight at birth there is a grave risk they won't survive long enough to be weaned . . . 17% of births were

to mothers who had eight or more pregnancies."

How do these people live on their reserves? Listen and judge: 60% of the homes are three rooms or less

90% are without indoor toilets

85% are without running water

50% have no electricity

47% of the Indian families earn less than \$1000 per year. Another 25% earn below \$2000. And yet our sociologists say \$3000 for a man, his wife and two children is the "poverty line!" Statistics from the Department of Indian Affairs show one-third of the Indian population is receiving welfare—and this is one of the richest lands in the world.

Today, the Indian is a young people—60% are below the age of 21—132,000 roughly—132,000 technically who are of an educable age. And yet, there are only 60,000 in school, less than half of those who could be receiving an education. You say, "1 in 4, that's not bad." I say, it's shameful! Especially when you realize that of these 60,000 *only* 6,000 are in grade nine or higher—a 90% dropout.

I wonder if the Queen knew how correct she was—not all of its people are free from want, from hardship, from suffering.

This picture I have painted shows reservation communities at the bottom of the economic totem pole, lowest on the scale of social and economic progress. The people on these reservations have a culture, but these people live under a culture of poverty. Join this poverty to isolation, add a substandard quality of education, subtract economic growth, bracket with 100 years of paternalism and you have a modern math problem too tough for the Indian alone to answer—the people of Canada, through their governments, must find a solution.

I could speak with you of many factors which have, and are, contributing to this situation—but for today, let us examine "Legislated Discrimination" which I hold is the major cause of this shameful mess.

Am I an Indian . . . ? My mother came from Walpole Island Reserve, my father from Muncey Indian Reserve—but I am not an Indian—because I do not

fit the legal definition of what an Indian is! It says here "Indian" means a person who pursuant to this Act is registered as an Indian or is entitled to be registered as an Indian;" (Section 2.1.g.).

What is this? It is the Indian Act, as unilaterally passed by the House of Commons in 1951. Here is "Legislated Discrimination."

Name me another piece of legislation which defines a people? By the way, I am not sure what I am. And, if you fit this definition your name is entered on the roll in Ottawa and you get a number.

Let me tell you of Indians and marriage. If an Indian girl, with Treaty Status, marries a non-Indian; she ceases to be an Indian. Or, if a Non-Indian girl marries a Treaty Indian (male), she, the Non-Indian, becomes an Indian—complete with number.

A few sentences back, I mentioned that this Indian Act was unilaterally passed by the House in 1951—for your further information, you might be interested in knowing that the Indian people were not asked if they approved, disapproved, supported or what they thought of this piece of legislation. As a matter of fact, in 1951, when this Act was passed, the Treaty Indian of Canada could not vote in Federal Elections.

(This right of a Canadian citizen was not given to the Treaty people of Canada until 1960.) If my history memory is functioning, I recall a country losing a package of colonies over legislation without representation.

May I point out just how backward our country has been in recognizing the rights of its native people. In 1958, the then Prime Minister, Mr. Diefenbaker, appointed to the Upper House, a gentleman by the name of Gladstone; Mr. Gladstone was and is a Blood Indian, from the Blood Reserve of Southern Alberta. Ironically, when he was appointed to the Upper House in 1958, he could not vote in a Federal Election but he sat in our Parliament as a Senator. As a matter of fact, Senator Gladstone and all the Treaty Indian people of Alberta were not given the right to vote in their Provincial Elections until 1965.)

The Globe and Mail of February 20, 1967, carried the headline, LAING ANNOUNCES OVERHAUL OF INDIAN ACT. "Sweeping changes will be made in the federal Indian Act this year to provide for the emancipation of Canada's Reserve Indians . . . The biggest single result of the legislation would be self-determination on the country's reserves without interference of influence from the federal government . . . The Indians would be closer to independence than they have been since the white man took over Canada."

*An address by Walter Currie, Chairman, Committee on Education, Indian-Eskimo Association of Canada to the 19th Annual Conference of Commissions for Human Rights.

What Mr. Laing announced, sounded very good. Unfortunately there are two blunted arrows in the quiver:

Firstly, it is not on the agenda of the House of Commons this year because there are too many more vital things demanding the attention of this country's legislators. Also, the Indians are not enough of a squeak in the wheel to demand this kind of attention. Were they, and had they more Canadians speaking for and with them, maybe it would be on the agenda for this year.

Secondly, and I may sound as though I speak with a forked tongue, there is no guarantee that the Indian people, as a people, will be asked for their views and opinions as to what could or should be

Most people believe that under the Indian Act reserves belong to the Indian bands who reside therein. But *Sect. 2.1.0* says: "reserve means a tract of land, the legal title to which is vested in Her Majesty, that has been set apart by Her Majesty for the use and benefit of a band;" or *Sect. 18.1* "... reserves shall be held by Her Majesty for the use and benefit of the respective bands ... and subject to this Act and to the terms of any treaty or surrender, the Governor in Council may determine whether any purpose for which lands in a reserve are used or are to be used for the use and benefit of the band;" or *Sect. 18.2* "The Minister may authorize the use of lands in a reserve for the purpose of Indian Schools, the administration

flow"—that is what Indian people think is meant by "this is our reserve"—"this is Indian Land"—"the Treaty makes this our land". But read *Sect. 35 parts 1-2-3-4* and learn, as the Indian has bitterly learned—Reservation land can be expropriated and has been expropriated. You may say, "but so it is for any one in Canada". And I must agree except for two vital facts:

1. When this legislation was passed Indians were unable to vote. That's like taking candy from a kid who is bound and gagged.

2. For people of Canada, the land they own was purchased. The Indian's land, his reservation, was and is his small retention of what was once all his. This reserve of a few acres he kept and in turn gave away the forests, plains, mountains, rivers and streams upon which depended his way of life.

There's the difference and the unfairness—those two facts put the Indian in a different position to a citizen of Canada—to the Indian is owed a legal and moral debt.

Have I answered the question: "Do Indians own their Reservations?"

Free Enterprise

Are Indians Citizens with equal rights? Equal opportunities? Listen to *Sect. 32.1* A transaction of any kind whereby a band or a member thereof purports to sell, barter, exchange, give or otherwise dispose of cattle or other animals, grain or hay, whether wild or cultivated, or root crops or plants or their products from a reserve in Manitoba, Saskatchewan, Alberta, to a person other than a member of that band, is void unless the superintendent approves the transaction in writing.

Death and Wills

Sect. 42 to 50 inclusive make for weird reading. Briefly it says "all jurisdiction and authority in relation to matters and causes testamentary, with respect to deceased Indians, is vested exclusively in the Minister ..."

In essence, complete authority is in the Minister's hands, for example *Sect. 46* says that the Minister may declare a will void in whole or in part.

Even into the grave, the Department of Indian Affairs runs the Affairs of Indians.

Elections are held whereby the chief and council are chosen by the people of the reserve. But—*Sect. 73.1* "Whenever he deems it advisable for the good government of a band, the Minister may declare by order that ... the council of the band ... shall be selected by elections. ..."

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Thirteen year old Patrick Carpenter of Moosonee and twelve year old Jack Louttit of Moose Factory, both Cree Indians, spend a happy day at Expo as a reward for being top students in their schools.

done with, to, for, and around the Indian Act. Now I do not deny that the members of the Indian Advisory Council have been questioned about this, but I challenge whether this Council of Indian People represents, by a democratic vote, the Indian people of Canada.

One asks, how can both be done—put it on the agenda of the House and yet survey the opinions of 220,000 people on 2,260 reserves? I agree, but cannot a motion be put on the floor, and in so doing make legislators aware of the ramifications of such a revision, and then have it tabled for a definite period during which time the Department of Indian Affairs would be instructed to ascertain the wishes of the Indian People of Canada and to report back to the House!

of Indian Affairs, Indian burial grounds, Indian health projects ... or *Sect. 19* "The Minister may (b) divide the whole or any portion of a reserve into lots or other subdivisions, and (c) determine the location and direct the construction of roads in a reserve." or *Sect. 20.1* "No Indian is lawfully in possession of land in a reserve unless, with the approval of the minister, possession of the land has been allotted to him by the council of the band." or *Sect. 20.4* "Where possession of land in a reserve has been allotted to an Indian by the council of the bands the Minister may, in his discretion, withhold his approval."

Some of you may have heard those words "as long as the sun shall rise, the grass shall grow, and the rivers shall

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Enfranchisement

Section 108.1 deals with Treaty Indians wishing to give up their Treaty rights:

"On the report of the Minister that an Indian has applied for enfranchisement and that in his opinion the Indian

- (a) is of the full age of 21 years,
- (b) is capable of assuming the duties and responsibilities of citizenship, and
- (c) when enfranchised, will be capable of supporting himself and his dependents,

the Governor in council may by order declare that the Indian and his wife and minor unmarried children are enfranchised."

From 1955 to 1965, 7,725 Indians were enfranchised. I wonder what tests were used to assess their capabilities of citizenship and self-support? My mother when enfranchised could neither read nor write!

Education

According to the B.N.A. Act, education of the people of Canada rests in the hands of the Provinces—except for Indians. The authority for the education of Indian children rests wholly in the hands of the Minister. (Nowhere in the Act, nor in reality, do Indian parents have any say in the education of their children—School Boards or Boards of Education do not exist on reservations—and where Indian children are integrated into schools of neighbouring white communities, the parents are neither elected to seats on these boards nor invited to even sit on them.)

There lies one of the major reasons why a 90% dropout occurs among Indian children. Only as a man is involved will he concern himself! Until Indian parents are given greater opportunity to be responsible for and to participate in the decisions relating to their children's education, until then, only minor positive improvements will occur.

Sect. 119 Still on education—did you realize that an Indian child who is expelled or suspended from school or is not a regular school attender shall be labeled "Juvenile Delinquent". Is this true for all other school children across Canada?

You have often heard how we Indians cannot "hold our liquor"—in either hand—The Act covers this and in turn, forces Reservation Indians to break the law.

Most Provinces now permit the Indian to buy a drink in a hotel or retail store. But the Indian Act *Sect. 96*, says the Indian may not bring his legal purchase home onto the Reserve to drink it! So he

The Original Intention

THE LONGSTANDING NEGLECT OF THE native people did not arise from lack of knowledge of the situation. For instance the Earl of Elgin, Governor-General of Upper Canada in 1854 made the following plea for government action: "... the time has arrived when the machinery, so elaborately devised with (the object of protection) may be modified in some details. If the civilizing process to which the Indians have been subject for so many years had been accompanied by success, they have surely by this time have arrived at a sufficiently enlightened condition to be emancipated from the state of pupillage in which they have been maintained; if on the other hand the process has been inadequate to achieve the desired end, it has been long enough in successful operation to warrant the adoption of some other method of procuring this result.

has to drink it up some alley or in a parked car and then is picked up for being drunk or he becomes a hazard driving his car!

The band members of a reserve may vote for a local option, it is true. But—in non-Indian communities, which are dry, a member of that community may still buy and bring onto his property a case of beer without arrest. Is this equality before the law or is it special laws for special people?

All too briefly in the preceding comments I have covered some of the injustices incorporated into the Indian Act—an Act passed by our country's top legislators. Maybe some are asking why have I not touched on colour discrimination, job discrimination—do they not exist? True—but remember I said I believe that this legislated discrimination is the major cause of the mess in which the Indian people of Canada find themselves.

You must understand that a people who have existed under such an Act which treats them so paternalistically, which has excluded them from the Canadian way of life, which has isolated them from a world of progress and growth—you must understand the effect this Act and its execution has had and does have upon the mental set of my people. The Indian people believed and still believe, in too many cases, that what the Indian agent says is law! They do not realize their own human rights—their rights to take their problems to succeeding levels, including the Prime Minister. You cannot live as my people have lived for generations, without acquiring the inertia to act for oneself. As Josh White says in one of his songs "I Beer: Down So Long, I Ain't Never Thought of Standing Up".

The original intention never can have been to retain these people in a state of permanent minority and always regard them as unfit to assume the responsibilities which must, sooner or later, devolve upon every member of a civilized Community. The more intelligent and educated Indians, of which there are great numbers, are extremely anxious that the experiment should now be tried of allowing them the control of their own private funds, and express themselves ready and willing to assume the consequent liabilities. This desire seems most natural, and I trust that if it is complied with in the manner proposed, individual enterprise and industry will be developed to an extent that will justify so important an acceleration in the administration of Indian Affairs."

— From a Brief prepared by the Indian-Eskimo Association.

What then is to be done? The Federal Government, which is the people of Canada, must examine its policies and role toward its Native People, the Provincial Governments must get off their tailbones and must accept the fact that these people are citizens, as much as anyone else in the provinces, and therefore deserve equal opportunities and equal services. It is high time that the Provinces stopped hiding behind the idea that "Indians are a Federal responsibility". One sometimes gets the idea that the only time provinces fight for Provincial Rights is when it involves a source of revenue.

The Indian people want to accept and must be given responsibility for their destinies.

In closing, two thoughts—

After speaking to a group recently, one gentleman came to me and said, "Mr. Currie, I am ashamed for what my forefathers have done to your people". My reply, "Do not be ashamed for what they did but be ashamed if you do nothing."

His Excellency, the late Governor-General Vanier, said in his Brotherhood Week message:

"The first prerequisite of unity is mutual understanding and a willingness to serve. To live for oneself alone is not to live at all. Only as we develop an awareness of the needs and feelings of others can we hope to rise to real stature and spiritual manhood. Our Country as a whole will be great in proportion to the compassion its citizens show for each other. Let us remember that just as none of us can be perfectly free until all our people are free, so none of us can be perfectly happy until the well-being of every Canadian is assured."

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